

N.D.A.G. Letter to Stastney (Dec. 14, 1989)

December 14, 1989

Mr. Ron Stastney
Assistant Superintendent
Department of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Ron:

Thank you for your request for an opinion concerning the meaning of subsection 3 of section 5 of House Bill No. 1421, which was passed during the 1989 legislative session. You ask whether the law requires one hour of supervision per student per week.

Subsection 3 of section 5 of House Bill No. 1421 states, in part:

Any certificated teacher supervising home-based instruction shall spend a minimum average each month of one hour per week in contact with each student under the teacher's supervision who is receiving home-based instruction. (emphasis added)

It is possible to interpret the underlined language to mean either one hour per student per week or one hour per group of students per week; this statute may be considered ambiguous in this regard. N.D.C.C. § 1-02-39 lists certain sources which may be consulted when construing ambiguous statutes. One source which may be consulted is the legislative history which surrounds the passage of the particular statute. In this case, it is useful to look beyond the statute to the legislative history in order to determine the legislative intent.

Representative Dan Ulmer, as one of the sponsors of the bill, testified before both the Senate Education Committee and the House Education Committee in order to explain the bill. Representative Ulmer indicated to the members of both committees that the supervision must be for a minimum of "one hour per child per week." Hearing on H. 1421 Before the House Comm. on Education, 51st Leg. (Feb. 8, 1989) (Statement of Rep. Dan Ulmer). Hearing on H. 1421 Before the Senate Comm. on Education, 51st Leg. (March 14, 1989) (Statement of Rep. Dan Ulmer). Upon review of the legislative history I found no further discussion of that portion of House Bill No. 1421 which relates to the degree of supervision required. Thus, I must assume that the legislators passed House Bill No. 1421 with the understanding that the supervision must be for a minimum of one hour per child per week as was explained to them by a sponsor of the bill, Representative Dan Ulmer.

After reviewing the legislative history, it is my opinion that House Bill No. 1421 requires

supervision of each student for a minimum of one hour per student per week.

Sincerely,

Nicholas J. Spaeth

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